

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NUMBER 00-6312-Cr-ROETTGER

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LOWEN ESPINUEVA

Defendant.

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MOTION FOR EXTENSION OF TIME TO FILE MOTIONS

The Defendant, **LOWEN ESPINUEVA**, by and through undersigned counsel, hereby files this Motion for Extension of Time to File Motions. In support, the Defendant states:

1. The Defendant is charged by indictment with a Conspiracy to Obstruct the Movement of Articles and Commodities in Commerce by Robbery, in violation of 18 U.S.C. section 1951(a) and 2, Attempted Obstruction of the Movement of Articles and Commodities in Commerce by Robbery, in violation of 18 U.S.C. 1951(a) and 2, and Using and Carrying a Firearm During and in Relation to a Crime of Violence Resulting in Serious Bodily Injury, in violation of 18 U.S.C. 924(c)(1) and 2.

2. The deadline for filing defense motions in this matter has been scheduled for December 18, 2000.

3. The Defendant moves for an indefinite extension of time to file motions. The basis for the extension of time is as a result of the Government's continued testing of evidence acquired during the investigation of these offences. On Friday, December 8, 2000, Barry M. Wax, counsel for the Defendant attended a Discovery Conference at the F.B.I. offices

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in Miami-Dade County, Florida. At that conference, counsel was advised that substantial forensic evidence, including, but not limited to fingerprints, serological evidence, blood samples for DNA testing, firearms and other ballistics evidence, and hair and fiber evidence has been transmitted to the F.B.I. laboratories in Washington, D.C. for further testing. Until the results of those tests are revealed to the Defendant, counsel will not know what, if any motions need to be filed with respect to those matters. Since there is no way to determine when the results of that testing will be provided, counsel moves for an extension of time to file motions of thirty (30) days after receipt of the results of such testing.

4. The Defendant further moves for a thirty (30) day extension of time from December 18, 2000 to file additional motions, including a Motion in Limine to Exclude 404(b) Evidence, Motion to Exclude Expert Testimony, Motion to Suppress Defendant's Statements and Motion to Suppress Evidence. The basis for an extension of time for each motion is as follows:

a. The Government has announced its intent to introduce 404(b) evidence with respect to the Defendant's arrest on August 28, 2000 for Loitering and Prowling. On that date, the Defendant was arrested with the codefendant, Jermaine Williams who was driving a vehicle which contained a 9mm Browning semi-automatic pistol with nine rounds of live ammunition, two bullet proof vests, one pair of handcuffs and two canisters of mace. In order to properly file a motion addressing that evidence, counsel must obtain the court files from the State of Florida, Broward County Courthouse and review the charging document, arrest affidavits and other documents therein. However, counsel has been unable to do so as of this date, but anticipates completing the research by December 27, 2000.

b. A Motion in Limine to Exclude Expert Witness Testimony must be



filed with respect to the results or reports of physical or mental examinations or scientific tests or experiments made in connection with this case which have yet to be provided. Specifically, the Government has announced it's intention to introduce the results of a fluorescein test with "spe" alternate light source which tested positive for the presence of human blood, a gunshot residue test conducted by the Coral Springs Police Department, and a voice stress test conducted on the Defendant, Lowen Espinueva by Coral Springs Police Department Detective Frank Gross. However, none of the results of any of those examinations, tests or experiments have been provided as of the date of filing this motion.

c. A Motion to Suppress the Defendant's statements must be filed.

This motion addresses two separate statements of the Defendant. The first is the post-arrest statements which he gave to the detectives in the instant case. That statement consists of no less than three sixty (60) minute audio cassettes which have recently been provided to defense counsel; however, counsel has not had the opportunity to completely listen to those audio tapes. Additionally, a second Motion to Suppress Statements must be filed with respect to statements attributable to the Defendant after his arrest in Broward County, Florida on August 28, 2000 for Loitering and Prowling. The Government's response to the Standing Discovery Order indicates that a sworn, taped statement of the Defendant was obtained at that time; however, it has yet to be provided to defense counsel. As such, counsel is unable to file the motion at this time.

d. A Motion to Sever Defendants pursuant to *Bruton v. United States*

must be filed. Counsel for the Defendant has recently been provided with ten sixty (60) minute audio cassettes of the post-arrest statement of the codefendant, Jermaine Williams. However, counsel has not been able to complete a review of those tapes at the time of filing this motion.

5. Pursuant to Local Rule 88.9, Barry M. Wax, counsel for the Defendant,




hereby certifies that he has discussed this motion with Thomas Lanigan, AUSA who has stated that he has no objection to an extension of time being granted.

WHEREFORE, the Defendant, Lowen Espinueva, moves this Honorable Court to grant this Motion for Extension of Time to File Additional Motions.

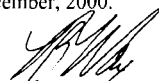
Respectfully submitted,

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BY: 
Barry M. Wax
Florida Bar No. 509485

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Thomas Lanigan, Assistant United States Attorney, 500 East Broward Boulevard, Fort Lauderdale, Florida 33394 and Daryl Wilcox, Assistant Federal Public Defender, 101 N.E. 3rd Avenue, Suite 202, Fort Lauderdale, Florida 33301 on this 18th day of December, 2000.

BY: 
Barry M. Wax